

REFERENCE TITLE: **underground water storage; unreasonable harm**

State of Arizona  
Senate  
Forty-seventh Legislature  
Second Regular Session  
2006

# **SB 1553**

Introduced by  
Senator Flake

**AN ACT**

**AMENDING SECTIONS 45-811.01, 45-814.01 AND 45-834.01, ARIZONA REVISED  
STATUTES; RELATING TO UNDERGROUND WATER STORAGE.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 45-811.01, Arizona Revised Statutes, is amended to  
3 read:

4 45-811.01. Underground storage facility permit

5 A. A person may apply to the director for a constructed underground  
6 storage facility permit or a managed underground storage facility permit and  
7 may operate an underground storage facility only pursuant to a permit.

8 B. A person applying to the director for a managed underground storage  
9 facility permit may request to have the facility designated as a facility  
10 that could add value to a national park, national monument or state park if  
11 that park or monument includes any portion of a natural channel of a stream  
12 or adjacent floodplain that would benefit from the facility.

13 C. The director may issue a permit to operate an underground storage  
14 facility if the director determines that all of the following apply:

15 1. The applicant has the technical and financial capability to  
16 construct and operate the facility.

17 2. Storage of the maximum amount of water that could be in storage at  
18 any one time at the facility is hydrologically feasible.

19 3. Storage at the facility will not cause unreasonable harm to land or  
20 other water users within the maximum area of impact of the maximum amount of  
21 water that could be in storage at any one time at the underground storage  
22 facility over the duration of the permit. FOR THE PURPOSES OF THIS  
23 PARAGRAPH, UNREASONABLE HARM TO OTHER LAND USERS INCLUDES FINANCIAL DAMAGE  
24 THAT RESULTS FROM MAN-MADE ALTERATIONS TO THE NATURAL SURFACE AND SUBSURFACE  
25 FLOWS OF WATERS.

26 4. The applicant has agreed in writing to obtain any required  
27 floodplain use permit from the county flood control district before beginning  
28 any construction activities.

29 5. The director of environmental quality has determined that the  
30 facility is not in a location that will promote either the migration of a  
31 contaminant plume or the migration of a poor quality groundwater area so as  
32 to cause unreasonable harm or is not in a location that will result in  
33 pollutants being leached to the groundwater table so as to cause unreasonable  
34 harm, if the proposed water storage at the underground storage facility is  
35 exempt from the requirement for an aquifer protection permit under section  
36 49-250, subsection B, paragraph 12, 13 or 24. For any facility exempt under  
37 section 49-250, subsection B, paragraph 24, the director of water resources,  
38 after consultation with the director of the department of environmental  
39 quality, may include in the permit any requirements, including operation,  
40 maintenance, monitoring, record keeping, reporting, contingency plan or  
41 remedial action requirements, as the director of water resources deems  
42 necessary.

43 D. The director may designate a managed underground storage facility  
44 as one that could add value to a national park, national monument or state  
45 park if the director finds that ~~and~~ BOTH of the following apply:

1           1. The applicant has agreed in writing to maintain a quantified,  
2 minimum base flow and annual discharge to the stream for the duration of the  
3 permit.

4           2. The project will benefit the groundwater basin as a whole.

5           Sec. 2. Section 45-814.01, Arizona Revised Statutes, is amended to  
6 read:

7           45-814.01. Contents of storage facility permit

8           A. A storage facility project permit shall include the following  
9 information:

10           1. The name and mailing address of the person to whom the permit is  
11 issued.

12           2. The name of the active management area, irrigation non-expansion  
13 area, groundwater basin or groundwater ~~sub-basin~~ SUBBASIN, as applicable, in  
14 which the facility will be located.

15           3. The design capacity of the facility and the plan of operation of  
16 the facility.

17           4. The maximum annual amount of water that may be stored at the  
18 facility.

19           5. Any monitoring required under subsection F of this section.

20           6. Any conditions consistent with this chapter.

21           7. The duration of the permit.

22           8. Any other information as determined by the director.

23           B. If the storage facility will be a groundwater savings facility, the  
24 permit shall include the following information in addition to the information  
25 required by subsection A of this section:

26           1. The plan by which the applicant will prove the quantity of  
27 groundwater saved at the storage facility each year.

28           2. The name of the recipient and the location and registration number  
29 of the well or wells from which groundwater withdrawals will be curtailed.

30           C. If the storage facility will be a managed underground storage  
31 facility and will be designated as a facility that could add value to a  
32 national park, national monument or state park, the permit shall include the  
33 following information in addition to the information required by subsection A  
34 of this section:

35           1. The quantified, minimum base flow and annual discharge to the  
36 stream that the applicant has agreed to maintain.

37           2. The annual quantity of water eligible for long-term storage credits  
38 for the facility and the annual quantity of water projected to be  
39 consumptively used by the enhancement of the national park, national monument  
40 or state park.

41           3. A description of the national park, national monument or state park  
42 that would benefit from the project.

43           D. The director may issue a storage facility permit for a period of  
44 not more than fifty years, except that on request of the holder of the permit  
45 the director may renew the permit if the director determines that the

requirements of section 45-811.01, subsections C and D and section 45-812.01, subsection B apply, if those requirements applied at the time of issuance. In making this determination, the director shall not consider land uses and water uses in the area of impact of the water stored at the storage facility that were not in existence when the permit was issued.

E. The holder of a storage facility permit may apply to the director for approval to convey the permit to another person. The director may approve the conveyance if the director determines that the person to whom the permit is to be conveyed and the storage facility will continue to meet the applicable requirements of sections 45-811.01 and 45-812.01.

F. The director may require the holder of a storage facility permit to monitor the operation of the facility and the impact of water storage at the facility on land and other water users within the area of impact of water stored at the storage facility. In determining any monitoring requirements, the director of water resources shall cooperate with the department of environmental quality and, to the extent possible, shall coordinate monitoring requirements with those required by the department of environmental quality.

G. The director, on the director's initiative or on request of the holder of the storage facility permit, may modify the conditions of the storage facility permit. In determining whether modifications are necessary, the director shall not consider land uses and water uses in the area of impact of the water stored at the storage facility that were not in existence when the permit was issued **BUT FOR USES THAT WERE IN EXISTENCE WHEN THE PERMIT WAS ISSUED, THE DIRECTOR SHALL FIND THAT EXISTING LAND USES ARE UNREASONABLY HARMED IF THE USE OF THE PERMIT CAUSES FINANCIAL DAMAGE THAT RESULTS FROM MAN-MADE ALTERATIONS TO THE NATURAL SURFACE AND SUBSURFACE FLOWS OF WATERS.**

H. Nothing in this article shall be construed as modifying or infringing on any existing water rights or private property rights nor shall anything in this article prevent any person or entity, whether governmental or private, from undertaking any flood control projects, including removal of vegetation within the channel of the stream or on the adjacent floodplain or diverting the permitted flow from the natural stream channel at the end of the permitted period.

Sec. 3. Section 45-834.01, Arizona Revised Statutes, is amended to read:

**45-834.01. Recovery of stored water; recovery well permit; emergency temporary recovery well permit; well construction**

A. A person who holds long-term storage credits or who may recover water on an annual basis may recover the water stored pursuant to a water storage permit only:

1. If the person seeking to recover stored water has applied for and received a recovery well permit under this article.

2. For water stored within an active management area, if one of the following applies:

(a) The proposed recovery well is located within the area of impact of the stored water, as determined by the director, and either the person recovering the water is the storer or the stored water to be recovered is Colorado river water. If the stored water to be recovered is effluent that is stored in a managed underground storage facility and if the proposed recovery well is not an already constructed well owned by the person recovering the water and is located within the exterior boundaries of the service area of a city, town, private water company or irrigation district, that city, town, private water company or irrigation district must be notified by the person recovering the stored water and must have the right to offer to recover the water stored on behalf of that person. If the city, town, private water company or irrigation district offers to recover the water on behalf of the person seeking recovery and the water that is offered for recovery is of comparable quality to the water that the person could recover, the person seeking to recover the water shall consider accepting the best offer from the city, town, private water company or irrigation district overlying the area of impact that has offered to recover the stored water.

(b) The proposed recovery well is located outside the area of impact of the stored water, as determined by the director, and all of the following apply:

(i) The proposed recovery well is located within the same active management area as storage.

(ii) The director determines that recovery at the proposed location is consistent with the management plan and achievement of the management goal for the active management area.

(iii) If the proposed recovery well is located within the exterior boundaries of the service area of a city, town, private water company or irrigation district, that city, town, private water company or irrigation district is the person seeking to recover the water or has consented to the location of the recovery well.

(iv) If the proposed recovery well is located outside, but within three miles of, the exterior boundaries of the service area of a city, town, private water company or irrigation district, the closest city, town, private water company or irrigation district has consented to the location of the recovery well.

(c) The proposed recovery well is located within the area of impact of the stored water, as determined by the director, the person recovering the water is not the storer, the stored water to be recovered is not Colorado river water and all of the conditions prescribed by subdivision (b), items (i) through (iv) ~~of this paragraph~~ are met.

3. For water stored outside of an active management area, if recovery will occur within the same irrigation non-expansion area, groundwater basin

1 or groundwater ~~sub-basin~~ SUBBASIN, as applicable, in which the water was  
2 stored.

3 B. Before recovering from any well water stored pursuant to a water  
4 storage permit, a person shall apply for and receive a recovery well permit  
5 from the director. The director shall issue the recovery well permit if the  
6 director determines that:

7 1. If the application is for a new well, as defined in section 45-591,  
8 or except as provided in paragraphs 2 and 3 of this subsection for an  
9 existing well, as defined in section 45-591, the proposed recovery of stored  
10 water will not unreasonably increase damage to surrounding land or other  
11 water users from the concentration of wells. FOR THE PURPOSES OF THIS  
12 PARAGRAPH, AN UNREASONABLE INCREASE IN DAMAGE TO SURROUNDING LAND INCLUDES  
13 FINANCIAL DAMAGE THAT RESULTS FROM MAN-MADE ALTERATIONS TO THE NATURAL  
14 SURFACE AND SUBSURFACE FLOWS OF WATERS. The director shall make this  
15 determination pursuant to rules adopted by the director.

16 2. If the applicant is a city, town, private water company or  
17 irrigation district in an active management area and the application is for  
18 an existing well within the service area of the city, town, private water  
19 company or irrigation district, the applicant has a right to use the existing  
20 well.

21 3. If the applicant is a conservation district and the application is  
22 for an existing well within the conservation district and within the  
23 groundwater basin or ~~sub-basin~~ SUBBASIN in which the stored water is located,  
24 the applicant has a right to use the existing well.

25 C. A city, town, private water company or irrigation district in an  
26 active management area may apply with a single application to the director to  
27 have all existing wells, as defined in section 45-591, that the applicant has  
28 the right to use within its service area listed as recovery wells on the  
29 recovery well permit, if those wells otherwise meet the requirements of this  
30 section.

31 D. If the applicant is a conservation district, the director may issue  
32 an emergency temporary recovery well permit without complying with section  
33 45-871.01, subsection F if the director determines that all of the following  
34 apply:

35 1. The conservation district cannot reasonably continue to supply  
36 central Arizona project water directly to a city, town, private water company  
37 or irrigation district due to an unplanned failure of a portion of the  
38 central Arizona project delivery system.

39 2. The emergency temporary recovery well permit is necessary to allow  
40 the conservation district to provide immediate delivery of replacement water  
41 to the city, town, private water company or irrigation district.

42 3. The application is for an existing well as defined in section  
43 45-591 that is within the groundwater basin or groundwater ~~sub-basin~~ SUBBASIN  
44 in which the stored water is located, is within the conservation district and

1 is within the service area of the city, town, private water company or  
2 irrigation district.

3 E. An emergency temporary recovery well permit issued pursuant to  
4 subsection D of this section may be issued for a period of up to ninety days  
5 and may be extended for additional ninety day periods if the director  
6 determines that the conditions prescribed in subsection D of this section  
7 continue to apply.

8 F. If the application for a recovery well permit is approved, the  
9 director shall issue a permit and the applicant may proceed to construct or  
10 use the well. If the application is rejected, the applicant shall not  
11 proceed to construct or use the well. A new well shall be completed within  
12 one year of receipt of the permit, unless the director in granting the permit  
13 approves a longer period to complete the well. If the well is not completed  
14 within one year or the longer period approved by the director, the applicant  
15 shall file a new application before proceeding with construction.

16 G. A recovery well permit shall include the following information:

17 1. The name and mailing address of the person to whom the permit is  
18 issued.

19 2. The legal description of the location of the existing well or  
20 proposed new well from which stored water may be recovered pursuant to the  
21 permit.

22 3. The purpose for which the stored water will be recovered.

23 4. The depth and diameter of the existing well or proposed new well  
24 from which stored water may be recovered pursuant to the permit.

25 5. The legal description of the land on which the stored water will be  
26 used.

27 6. The maximum pumping capacity of the existing well or proposed new  
28 well.

29 7. If the permit is for a proposed new well, the latest date for  
30 completing the proposed new well.

31 8. Any other information as the director may determine.